

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FERMIN CORTEZ, et al.,)	CASE NO. 8:08-CV00090
)	
Plaintiffs,)	
)	
vs.)	
)	
NEBRASKA BEEF, INC. and,)	
NEBRASKA BEEF, LTD.,)	
)	
Defendants.)	
<hr/>		
DAVID CHUOL, et al.,)	CASE NO. 8:08-CV00099
)	
Plaintiffs,)	
)	
vs.)	
)	
NEBRASKA BEEF, LTD.,)	
)	
Defendant.)	

APPLICATION FOR TEMPORARY RESTRAINING ORDER

Defendants, Nebraska Beef, Ltd, and Nebraska Beef, Inc. ("Nebraska Beef"), file this Application for Temporary Restraining Order, pursuant to Federal Rule of Civil Procedure 65, to temporarily restrain the Plaintiffs, Fermin Cortez, et al., and David Chuol, et al., and their retained notice administrator, Rust Consulting, from issuing Class Notice. In support of its application, Defendant states as follows:

1. On April 9, 2010, the Magistrate Judge denied Nebraska Beef's Motion for Notice to Class and adopted the Plaintiffs' proposed Form of Notice to Class. (Filing Nos. 202 and 307).

2. Nebraska Beef timely appealed the Magistrate's decision to the United States District Court for the District of Nebraska and moved to stay the Magistrate's ruling. (Filing Nos. 203 and 308).

3. The parties recognize there is no automatic stay of the Magistrate's Order; however, the parties agreed that no Notice to Class would be sent out without Plaintiffs' first contacting counsel for Nebraska Beef.

4. The Plaintiffs have now contacted counsel for Nebraska Beef and expressed their intention to instruct Rust Consulting to send out a Notice of Class.

5. Nebraska Beef requests a temporary restraining order enjoining the Plaintiffs and Rust Consulting from sending out the Notice of Class before the District Judge rules on Nebraska Beef's appeal of the Magistrate's Order.

6. Immediate and irreparable injury, loss or damage will result to Nebraska Beef for which it will have no adequate remedy if a temporary restraining order is not issued immediately to restrain and enjoin the Plaintiffs and Rust Consulting from sending out the Notice to Class. Indeed, there is a risk of confusion to the putative class exists if a corrective or supplemental notice is sent at a later date following a ruling on Nebraska Beef's appeal of the Magistrate's decision.

7. Nebraska Beef believes its position on the form of Notice has merit and is correct and, therefore, there is a reasonable probability that it will prevail on the merits of its appeal. The issuance of a temporary restraining order will result in no harm to Plaintiffs. The public will not be harmed by the issuance of a temporary restraining order.

8. This application is supported by the Declaration and Exhibits attached to the Index of Evidence and the brief filed contemporaneously herewith.

WHEREFORE, Nebraska Beef respectfully requests this Court enter a temporary restraining order enjoining Plaintiffs and Rust Consulting from sending out a Notice to Class before the District Court rules on the appeal of the Magistrate's decision.

Respectfully submitted this 29th day of April, 2010.

NEBRASKA BEEF, INC., and NEBRASKA
BEEF, LTD., Defendants,

By: /s/Brian J. Brislen
William M. Lamson, Jr., #12374
William R. Settles, #19879
Brian J. Brislen, #22226
LAMSON, DUGAN and MURRAY, LLP
10306 Regency Parkway Drive
Omaha, NE 68114-3743
Telephone: (402) 397-7300
Telefax: (402) 397-7824
wml@ldmlaw.com
wrs@ldmlaw.com
bjb@ldmlaw.com
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Brian P. McCafferty - cafstar@aol.com
KENNEY, MCCAFFERTY LAW FIRM
3031C Walton Road
Suite 202
Plymouth Meeting, PA 19462

-and-

Michael Hamilton - mhamilton@provostumphrey.com
PROVOST, UMPHREY LAW FIRM - NASHVILLE
One Burton Hills Boulevard, Suite 380
Nashville, TN 37215

-and-

Russell D. Henkin - rhenkin@bm.net
Shanon J. Carson - scarson@bm.net
Ellen T. Noteware - enoteware@bm.net
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103

-and-

Todd Schneider - tschneider@schneiderwallace.com
Carolyn H. Cottrell - ccottrell@schneiderwallace.com
W.H. "Hank" Willson - wwillson@schneiderwallace.com
SCHNEIDER WALLACE LAW FIRM
180 Montgomery Street, Suite 2000
San Francisco, CA 94104

-and-

Philip A. Downey - downeyjustice@gmail.com
P.O. Box 736
Unionville, PA 19375

-and-

Christopher P. Welsh - cwelsh@welsh-law.com
James R. Welsh - jwelsh@welsh-law.com
WELSH & WELSH, P.C., L.L.O.
9290 West Dodge Road, Suite 100 The Mark
Omaha, NE 68114

ATTORNEYS FOR PLAINTIFFS

/s/Brian J. Brislen